

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

DAVID LEE CRUMBY,

Movant,

Civil Action No. 3:06-00918  
Criminal No. 3:05-cr-00144-01

UNITED STATES OF AMERICA,

Respondent.

**MEMORANDUM OPINION AND ORDER**

This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the Court grant Defendant's §2255 motion. Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **GRANTS** Defendant's §2255 motion, consistent with the findings and recommendation. Defendant's previously imposed sentence is set aside.

The Court further **ORDERS** as follows:

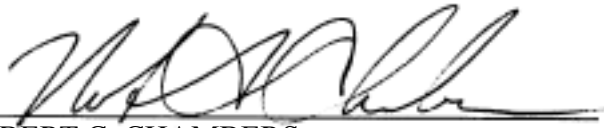
1). having previously found the defendant to be indigent and entitled to appointment of counsel under the Criminal Justice Act, the Court **DIRECTS** the Federal Public Defender to re-appoint Michael Frazier to represent the defendant. Mr. Frazier will investigate and consider the matters summarized by the Proposed Findings and Recommendation prior to re-sentencing;

2). re-sentencing will take place on **December 6, 2010**, at **1:30 p.m.** The Court **ORDERS** that the Probation Office prepare and forward a draft revised presentence report to the Government and counsel for the defendant no later than **October 25, 2010**, that the United States Attorney and counsel for the defendant file objections to the draft revised presentence report no later than **November 8, 2010**, and that the Probation Office submit a final revised presentence report to the Court no later than **November 22, 2010**.

3). relief having been granted, this civil action shall be **DISMISSED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, Rebecca Jarvis in the Office of the Federal Public Defender, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: September 7, 2010

  
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ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE